

E-Filed 9/18/08

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

CHARLES W. O'BRYAN, JR.,

Plaintiff,

v.

RODEO EXPRESS CHARTERS, et al.,

Defendants.

Case Number C 08-3367 JF (RS)

ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND

Plaintiff filed the complaint in this action on July 11, 2008, at which time the action was assigned to Magistrate Judge Richard Seeborg. On July 15, 2008, Judge Seeborg issued an order granting Plaintiff leave to proceed *in forma pauperis*, directing that the action be reassigned to a district judge, and recommending that the action be dismissed with leave to amend for failure to state claim upon which relief may be granted. The action was reassigned to the undersigned judge on July 16, 2008.

A court may authorize the commencement of an action without payment of the filing fee, but must dismiss such action if at any time the court determines that the complaint fails to state a claim upon which relief may be granted. 28 U.S.C. § 1915(a)(1), (e)(2). As presently drafted, the complaint fails to set forth a cognizable claim. The complaint, a one-page handwritten

document, alleges that Defendants were negligent in letting a passenger ride in the front seat of a vehicle and in assigning Plaintiff a faulty piece of equipment. It is entirely unclear how Defendants are alleged to have violated Plaintiff's rights, or whether the rights violated are grounded in federal statutory or constitutional law. Accordingly, the complaint will be dismissed with leave to amend.

ORDER

- (1) The complaint is DISMISSED WITH LEAVE TO AMEND;
- (2) Any amended complaint shall be filed and served on or before October 31, 2008;
and
- (3) A Case Management Conference is set for October 31, 2008 at 10:30 a.m.

DATED: 9/18/08


JEREMY FOGEL
United States District Judge

1 Copies of Order served on:

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3 Charles W O'Bryan, Jr.
4 1275 Ashcroft Lane
5 San Jose, CA 95118
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